IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLN.NO.1029 OF 2007

Shri.Kamlakar Ratnakar Shenoy ..Applicant

Vs.

State of Maharashtra ..Respondents

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Mr.Prakash Naik advocate for applicant
Mr.K.V.Saste A.P.P. for the State
Mr.Rajendra Desai advocate for Orignial Complainant.

...

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : APRIL 17, 2007

P.C.

1. Heard the learned advocate for the applicant, the learned A.P.P. for the State and the learned advocate for the original complainant.

2. The applicant is seeking anticipatory bail in C.R.-II-126 of 2006 of Nalasopara Police Station. The said case is under Sections 3(1)(viii)and (ix) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

3. The applicant had preferred an application for anticipatory bail before this Court. During the

hearing of this application, it was stated by the counsel for the applicant that the applicant shall surrender before the appropriate court and prefer an application for bail. In order to enable the applicant to take necessary steps interim protection granted earlier in respect of arrest is extended to 30.4.07.

4. It is stated by the learned advocate for the applicant that if the applicant moves the Court for regular bail under Section 439 of Cr.P.C. after presenting himself before the Court, the court may not consider the application for bail as it may be of the view that the applicant is not in custody. In my view, when the accused has appeared and surrendered himself before the Court, in such case, the court would have jurisdiction to consider the bail application as the accused shall be considered to be in custody within the meaning of Section 439 of Cr.P.C. Custody in the context of section 439 is physical control or atleast physical presence of the accused in Court coupled with submission to the jurisdiction and orders of the Court. A accused can be said to be in custody not merely when the police arrest him, produce him before the

Magistrate and get a remand to judicial or other custody but the accused can also be said to be in judicial custody when he surrenders before the court and submits to its directions. I am fortified in my view by the decision of the Supreme Court in the case of **Niranjan Singh and another Vs. Prabhakar Rajaram Kharote and others AIR 1980 S.C. 785**.

. It is clear that there is no impediment to decide the application for bail preferred by the applicant after he has surrendered before the court. To consider the said application for bail it is not at all necessary that the accused should be arrested and produced before the Court or that he should be in judicial custody. In this view of the matter, the interim order granted by this Court is extended upto 30.4.2007 to enable the application for bail to be considered by the appropriate Court on the applicant surrendering himself before the said court.

5. Application is disposed of in the above terms.

[Smt.V.K.Tahilramani, J.]